IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 308 OF 2000

Kisan Sakharam Pole ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

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Shri M.R. Deshpande advocate appointed for the appellant/accused.

Mrs. U.V. Kejariwal APP for the State.

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CORAM ; V.G.PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED; 17TH SEPTEMBER, 2004.

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the the order of conviction passed by the IV Additional Sessions Judge, Nashik in Sessions Case No.95 of 1998 under sections 302 and 201 of IPC on 7-11-1998 the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also orally canvassed before us.

2. With the assistance of the learned counsel for the accused and the learned Prosecutor, we have scrutinised the records of the case and re-appreciated the evidence on record.

3. The prosecution story as emerges from our re-appreciation of evidence stated briefly is that the accused and deceased Dhyaneshwar had in the month of March 1998 been to village ozar in search of job and on getting one, stayed there to do the work. On 30th March 1998 when the work was over the accused and the deceased came back to their residence, which was a temporary shelter created by them and this practice went on till 4th April 1998 when the accused and the deceased were seen together by several of the witnesses. On 5th April 1998 villagers located a dead body in the thorney fencing near the newly constructed Government houses for the temporary shelter. Report to the police station was lodged and investigation was undertaken and ultimately the accused was arrested and prosecuted.

4. The prosecution has, to prove its case, examined 11 witnesses, whose evidence along with other evidence was accepted by the learned trial Judge for coming to the conclusion of guilt as aforesaid.

5. P.w.1 Ramkrishna is a panch witness to prove Exh. 10 panchanama of recovery and seizure of blood stained clothes and shirt. P.w.2 Ramesh is another panch who has proved the recovery of wooden handle of crow bar at

the instance of the accused. He has proved the seizure. He was also the panch of the seizure of knife and some clothes which was also seized.

6. P.w.3 Jibhau identified the dead body of victim Kisan on 5-4-1998. To the same effect is the evidence of P.w.4 Dilip. P.w.5 Ramram is a Police Head Constable who lodged the complaint of murder after the inquest panchanama was over. He proves it which is Exh.23. P.w.6 is Dr. Fakirchand who examined the accused person and has proved certain minor injuries on the body of the accused.

7. P.w.7 Janabi is the neighbour of the accused, who has deposed that accused confessed to her killing of the victim. P.w.8 Bhaskar states that in the night of 4th April 1998 he was sleeping on the ota with the accused and he has identified the accused in the police station.

8. P.w.9 Kesarbai says that accused came to her on 5th April 1998 and stayed till night. She also has identified the dead body. P.w.10 is Dr. Ravindra who proves that the victim met homicidal death. P.w.11 is Chagan, A.P.I. who was the investigating officer.

9. It will be seen from the above evidence, that there

are no eye witnesses and the entire evidence is circumstantial. Reliance was placed by the learned trial Judge on the extra judicial confession made by the accused to P.w.7 Janabi. We will consider in extenso the evidence of P.w.7 Janabi. This witness deposed that in the night of 4th April around 8.30 p.m. the accused came to her house when she was taking meals. He demanded water to drink. She gave him water. He took the pot outside where the accused was residing. Next day morning i.e. on 5th April this witness went to the house of accused to take back her steel pot when she saw that accused Kisan sitting alone and having tea. She noticed some blood in front of the door of the house. On her query as to how the blood fell there, she was told by the accused that a pig was killed by a dog, and left there. Then the witness took the steel pot and went home. Then she learnt that some person being killed by some one else. She was interrogated by police and her statement was recorded. Thereafter according to this witness she was called at the police station also. Accused was there. She then took the accused by the side and enquired with him, who on enquiry told her that there was a quarrel between him and the deceased regarding money and drinking liquor and therefore he assaulted the deceased with a wooden handle. It is this extra judicial confession on which reliance is placed by the prosecution. It will

be seen that it is made to the witness in the police station itself. It is nowhere stated by the witness that no police officer was within the ear shot of the witness and the accused. Though she has denied the suggestion in the cross examination, at one place she admits that she was told by police that Kisan himself committed the murder. She has also denied the suggestion in the cross examination that the police were present when the accused told her, but then she admits that the accused was immediately kept in police lock up. In any event the witness admits that the confession was made within the police station. It is admitted that the police personnel were around and it is also admitted that immediately thereafter the accused was taken and kept in the lock up. In such circumstances, it is impossible for us to accept the extra judicial confession.

10. After excluding the extra judicial confession what remains is recovery of certain articles like handle of the spade or the knife which is grossly in adequate to connect the accused to the crime. The fact that accused was sleeping on the ota in the night of 4th is proved. It is not the case of the prosecution that accused thereafter left the place committed murder and came back. The prosecution has noted the injury on the

person of the accused. They are minor. Yet there is no explanation of whatsoever as to how these injuries were caused. Even the medical evidence does not corroborate the theory of the accused being the person who stabbed the victim. In any case in our opinion, the entire evidence on record even if accepted is inadequate to come to conclusion that the prosecution has by this evidence proved beyond reasonable doubt that it was the accused alone who has committed murder. In our opinion, the heavy reliance placed by the learned trial Judge on the recoveries made and extra judicial confession recorded, is incorrect in the circumstances of the case. Hence we disagree with the same. In the result, therefore the appeal must succeed and is hereby allowed. The order of conviction is set aside. The accused is acquitted of the offences with which he is charged. He is in jail. He shall be released forthwith if not otherwise required.

11. We quantified the fees to be paid to the learend Prosecutor and the advocate appointed for the appellant as Rs. 1000/- for this appeal.

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